Message

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E&E News
Lawmakers to question EPA, NRC picks
https://www.eenews.net/eedaily/stories/1062535161/search?keyword=epa
Jeremy Dillon

The Senate Environmental and Public Works Committee will hold a confirmation hearing this week to fill the No. 2 spot at EPA, as well as a duo of nominees to fill out the Nuclear Regulatory Commission.

Doug Benevento, the White House's choice to become EPA deputy administrator, will undergo the committee spotlight.

For Democrats, questions are sure to follow a familiar trajectory of complaints about EPA's approach to climate change, chemical and drinking water regulations, and cleanup of Superfund sites, among other issues.

Benevento, a former utility executive, is currently associate deputy administrator. He joined the agency in October 2017 under then-Administrator Scott Pruitt, initially serving as head of the Denver-based Region 8 office.

But he may take some friendly fire, as the Trump administration's approach to the renewable fuel standard is likely to prompt questions from corn state Republicans on the committee that are upset with last week's decision to appeal a court ruling that sided with small refineries in a dispute over blending waivers.

EPA's back-and-forth on the RFS has threatened previous nominees to the agency, as lawmakers like Sen. Joni Ernst (R-Iowa) fight to ensure compliance by the waffling Trump administration caught between the farming and oil and gas industries.

NRC

David Wright, a current Republican commissioner on the NRC, is seeking an additional five-year term. His current one expires at the end of June.

A former chairman for the South Carolina Public Service Commission, Wright specialized in nuclear waste policy, serving as a member of the advisory council of the Bipartisan Policy Center's Nuclear Waste Initiative and as an ex officio member and chairman emeritus of the Nuclear Waste Strategy Coalition.

Joining him is the Democratic pick to fill out the commission — Chris Hanson, a staffer on the Senate Appropriations Committee.

In addition to handling nuclear-related spending matters, Hanson also had a stint as a senior adviser in the Department of Energy's Office of Nuclear Energy in the Obama administration.

Schedule: The hearing is Wednesday, March 11, at 10 a.m. in 406 Dirksen.
Witnesses:

- EPA deputy administrator nominee Doug Benevento.
- NRC Commissioner David Wright.
- NRC nominee Chris Hanson.

The Hill
Experts warn EPA making 'secret science' rule more restrictive
https://thehill.com/policy/energy-environment/486411-experts-warn-epa-making-secret-science-rule-more-restrictive
Rebecca Beitsch

The Environmental Protection Agency's (EPA) latest rewrite of its science transparency rule may be even more restrictive than the last one, scientists say, expanding the reach of a rule that limits consideration of studies that don't make their underlying data public.

Spearheaded under former EPA Administrator Scott Pruitt as an effort to battle "secret science," critics said the effort would instead block the agency from considering landmark public health studies where researchers would be unable to share the confidential information of participants.
A new version of the rule released late Tuesday walks back the original proposal, instead stating the agency will give preference to studies with public data rather than exclude those that don't.
But scientists said the way the new proposal broadens the type of research that would be impacted by the rule as well as how EPA relies on research make the new version even more dangerous for public health than its predecessor.
"My first reading of it as it came up was they actually made it worse," said Bernard Goldstein, a professor of environmental and occupational health at the University of Pittsburgh.
The first version of the rule sparked major pushback--the 600,000 comments it sparked made it one of EPA's most-commented on regulations ever. Its merits were even questioned by the agency's independent science board. The new proposal is open for comment for 30 days, and EPA says it expects to issue its final rule later this year.

An EPA spokesperson told The Hill this week the agency needs to "ensure that the data and models underlying scientific studies that are pivotal to [a] regulatory action are available for review and reanalysis."
But critics argue the transparency measures the Trump administration says are needed are just a red herring used to justify limiting scientific research for political purposes.
EPA is "redoubling its efforts on science censorship and stacking the deck in favor of industry interests," the Natural Resource Defense Council argued after the rule came out.

EPA doesn't need studies' underlying data, scientists say, because research is vetted by reviewing basic methods and statistics to see if the results support any conclusions that were drawn.
"EPA is saying, 'Well even if that's a really good study, we're not going to use it or we're going to downgrade it," said Andrew Rosenberg with the Union of Concerned Scientists.
"That just doesn't make any sense when you're trying to protect public health."
The old version of the rule applied to just dose-response research that analyzes at what level chemicals and pollutants are toxic, but the new rule would diminish the value of any study that doesn't make its data public.
Experts say that could include a wide variety of research.
Public health research may not just look specifically at the level at which a substance becomes dangerous but also map how proximity to industrial outputs or vehicles emissions is linked with various types of cancer and illness.
The policy could also hinder EPA from considering a wide variety of environmental research, like those documenting how pollutants spread and monitoring their impacts.

Such studies may be unable to make their data public. Researchers that do health-based studies on humans can't publicly share peoples' medical data without their permission. Environmental research might rely on confidential business information or data collected on private land that owners may not want exposed.
Some industry groups, however, might be willing to do so.
In an email to The Hill, the EPA said they were focused on getting the highest quality science and that publishing data will help studies withstand scrutiny.
But Goldstein said the agency will be limiting the number of studies it considers, ultimately weakening the pool of research from which it draws conclusions.
"We use consensus in the scientific community to come to a judgment," he said.
"The present EPA is consistently acting in a way that destroys consensus and moves toward confrontation, and this is just one example."
The new version of the rule also expands its scope, with the data standards coming into play not just when weighing regulations but also as the agency develops its priorities.
Rosenberg argued that will weaken the agency on a number of fronts.
"EPA tries to identify threats to public health going forward. So their job is not just to be reactive -- 'Oh my gosh, this is happening, we better to do something about it' -- but also to identify new challenges arising from a whole range of issues -- new industries, chemicals, pollutants, climate change -- all bringing threats to bear in the future," he said.
"EPA needs to try to get ahead of the curve."

Bloomberg

Updated EPA Definition for Small Chemical Makers Sent for Review
https://news.bloombergenvironment.com/environment-and-energy/updated-epa-definition-for-small-chemical-makers-sent-for-review?context=search&index=1
Pat Rizzuto
A final EPA rule that would allow more small manufacturers to qualify for less chemical record-keeping and reporting requirements is under review at the White House, bringing it one step closer to publication.

- The Environmental Protection Agency proposed it in June 2019 to adjust the chemical rule's decades-old definition of a small manufacturer in order to account for inflation. The agency sent the rule for review to the White House's Office of Management and Budget on Friday.
- The agency proposed two definitions. Under the first, total annual sales of small chemical manufacturers would be capped at $110 million, compared to $40 million, and their production or importation volume couldn't exceed 100,000 pounds. Under the second definition, small companies could have total annual sales of $11 million—instead of the current $4 million.
- Such companies would have reduced obligations to report production volume or other information to the EPA, when required by regulations such as the Chemical Data Reporting (CDR) rule.
- CDR reports are due later this year, meaning the new definition would apply if the White House clears the EPA's final rule before then.
- Note: EPA Proposal May Not Streamline Chemical Reporting After All

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E&E News
'Into the unknown': Navy plans PFAS tests at Md. base
https://www.eenews.net/greenwire/stories/1062533335/search?keyword=epa
By Bev Banks

LEXINGTON PARK, Md. — Despite the Navy's assurances, residents near an air base by the Chesapeake Bay are worried about whether chemicals are contaminating their water.

The military looms large in St. Mary's County, where Navy, Marine Corps and Army banners hang in a cafe near Naval Air Station Patuxent River and residents rely on the base for jobs.

But they are also concerned about chemicals known as PFAS found in firefighting foam that have caused drinking water contamination near other military sites across the country (***E&E Daily***, Mary 4).
NAS Patuxent River, located at the mouth of the Patuxent River in Lexington Park, is the county's largest employer, providing about 25,000 jobs, according to Maryland's **Department of Commerce**.

"What happens at the base impacts everybody one way or the other," said Bill Hunt, 68, of Leonardtown.

The Navy no longer uses firefighting foam, which contains per- and polyfluoroalkyl substances, during training, but it is used in the event of an emergency fire.

Traces of cancer-causing pollutants have been found in Clovis, N.M.'s drinking water, linked to PFAS use at Cannon Air Force Base. Contamination was also found in Coupeville, Wash., near Naval Air Station Whidbey Island and Naval Outlying Field Coupeville. Defense Secretary Mark Esper has said addressing PFAS pollution at these and other military sites is a priority (***E&E News PM***, Feb. 27).

A public meeting Tuesday night that drew over 250 people to Lexington Park Library addressed the Navy's progress in identifying possible contamination around NAS Patuxent River.

Officials from the Navy, EPA, the Agency for Toxic Substances and Disease Registry, the St. Mary's County Health Department, and the Maryland Department of the Environment were there to answer questions, as community members crowded around poster boards that showed known and suspected areas on the installation where PFAS-containing foam was used.

"What were they doing to clean it up? How did they clean it up? Where were they taking it?" asked Geri Lloyd, 59, of Lusby, Md. She lives in Calvert County, about 15 miles from the installation. Her husband works on the base, and her sister lives nearby.

David Steckler, the remedial project manager who runs the environmental restoration program for NAS Patuxent River, said that the installation sampled its own water and that the local water supplier for residents outside the base tested its water. Both were found to be free of PFAS.

"There is no drinking water exposure in the area, surrounding the base or at the base itself," he said.

Patrick Gordon, public affairs officer at NAS Patuxent River, said the Navy does plan to conduct PFAS sampling at 18 sites at the installation.

Steckler said the Navy is "extremely early in the process" of testing the sites for potential contamination. It's a lengthy process, he said.

"If we come to the end, and we find a site that needs to be cleaned up to protect human health and the environment, we will do so," Steckler said.

PFAS awareness

Lloyd said she first learned about PFAS when her sister "read an article in the paper and told me about it." Before then, Lloyd said, she "didn't have a clue."

Hunt said he didn't know until the Navy's meeting that PFAS were "used so widely on the base" to put out fires in the airplane hangars.

One St. Mary's City resident has been especially outspoken about potential contamination, conducting his own sampling that residents brought up at the meeting.

Pat Elder, 64, collected water samples from St. Inigoes Creek near his home and sent it to the nonprofit Freshwater Future, which issued a report that showed the presence of PFAS above EPA advisory levels. Elder published the results online.

He argued that the creek is contaminated due to its proximity to the Naval Outlying Field Webster, an extension of NAS Patuxent River about 12 miles from the base.

"It's not good enough to say, 'Well, we trust the Navy to do the job, we trust the Navy to protect the health of people in Maryland.' No, that's what I'm about right now," Elder said.

Julianna Parreco, a 22-year-old student at St. Mary's College, read online about the St. Inigoes Creek testing. She was worried about PFAS levels because "Inigoes Creek is like five minutes away from my house."

Gordon, the NAS Patuxent River public affairs officer, cast doubt on the test results and said the Navy has cautioned against misinformation.

"While they can do testing at home, it's important to understand that there are very few labs in the United States that are actually certified to test for PFAS," Gordon said.

Janice Sevre-Duszynska, 70 years old and friends with Elder, traveled from Baltimore to protest outside the Navy's forum. She held a cutout of an oyster in front of her face to show her distress over possible PFAS contamination in seafood.

"I am concerned for pregnant women, for children, for all of us, because the, you know, the oysters, the fish, the water, all of that needs to be pure and clear," Sevre-Duszynska said.

'More questions than answers'

Some people still had questions after attending the Navy's meeting.

"I definitely walked away with a lot more questions than answers," said Rosa Hance, 31, of Great Mills, Md., who asked about how frequently the Navy tests for water contamination.

As the chairwoman of the Sierra Club's Maryland chapter executive committee, Hance has received questions from the community about PFAS. She said the Navy's answers made it difficult for her to understand the path forward.

"I'm walking into the unknown here," Hance said. "I don't, I'm not sure what the plan is and what citizens should be expected to know or what we should do."

St. Mary's County resident Bob Lewis, 64, executive director of the St. Mary's River Watershed Association, said the Navy "did a fairly good job" assuring people there was not a threat to their drinking water, but he also left the meeting without a sense of clarity.

"It seemed like the questions that I want answered, that my organization needs answered, didn't get answered and are not going to be answered anytime in the near future," Lewis said.

E&E News
CPAC virus carrier sparks concerns at EPA, DOE, Interior
https://www.eenews.net/greenwire/stories/1062559723/search?keyword=epa
Corbin Hiar and Jennifer Yachnin

The heads of EPA and the departments of the Interior and Energy were at a conservative political conference late last month also attended by a confirmed carrier of a respiratory illness that's spreading rapidly and taking a toll on global markets.

Trump administration energy and environmental policy leaders or their representatives have said they don't believe EPA Administrator Andrew Wheeler, Interior Secretary David Bernhardt or Energy Secretary Dan Brouillette were infected.

The American Conservative Union acknowledged Saturday that one of the attendees at the Conservative Political Action Conference had been diagnosed with COVID-19, the disease caused by the novel coronavirus that emerged late last year in Wuhan, China. It has so far infected at least 105,586 people around the globe and killed 3,584, according to the **World Health Organization**.

"Our children, spouses, extended family, and friends attended CPAC. During this time, we need to remain calm, listen to our health care professionals, and support each other," the ACU wrote on its Twitter account.

The statement noted that the unnamed individual had not "attended events in the main hall" nor interacted with President Trump or Vice President Mike Pence.

But two Republican lawmakers — Texas Sen. Ted Cruz and Arizona Rep. Paul Gosar — did meet with the infected individual. Both announced over the weekend they would practice self-quarantine until they were certain they hadn't contracted the disease (*E&E Daily*, March 9).
According to the **agenda**, both lawmakers appeared at CPAC panels on the afternoon of Feb. 27.

Gosar, who is at home in Arizona, discussed his current mental state in a series of tweets this morning.

"Good morning to everyone except those hoping I die from Corona Virus. You know who you are," he wrote on his personal Twitter account. He later wrote: "Been thinking about life and mortality today. I'd rather die gloriously in battle than from a virus. In a way it doesn't matter. But it kinda does."

Wheeler spoke at the conference Feb. 28. But EPA spokeswoman Corry Schiermeyer said, "We have no reason to believe Administrator Wheeler came into contact with the CPAC attendee that tested positive for COVID-19," adding that no changes have been made to his schedule.

The same morning, Bernhardt **spoke** with the radio program "Breitbart News Daily" at CPAC, according to the publication's website. A request to Breitbart's media contact about whether any of its staff are now in quarantine was not immediately returned.
The Interior secretary also attended CPAC for an early morning panel on Feb. 29, along with acting Office of Management and Budget Director Russ Vought and former Colorado Rep. Bob Beauprez (R) (***Energywire***, March 2).

Interior spokesman Nicholas Goodwin said Bernhardt "did not have any contact and doesn't plan to self-quarantine."

Brouillette also appeared on stage at CPAC on Feb. 29.

The Department of Energy didn't respond to a request for comment on whether he came in contact with the infected individual. But on Friday, Brouillette told reporters, "I'm not sick at all" (***Energywire***, March 9).

Fears about the economic impact of the COVID-19 virus caused the S&P 500 this morning to drop 7%, a steep sell-off that temporarily halted trading.

Trump has repeatedly sought to minimize concerns about the disease. In a tweet today, for example, he compared it to the "common Flu," which he said kills between 27,000 and 70,000 people per year.

"Nothing is shut down, life & the economy go on," he wrote. "At this moment there are 546 confirmed cases of CoronaVirus, with 22 deaths. Think about that!"

Reporters Michael Doyle and Hannah Northey contributed.

National Law Review
EPA Adds Two Microorganisms to List of Microorganisms Eligible for Exemption from Certain TSCA Reporting Requirements
https://www.natlawreview.com/article/epa-adds-two-microorganisms-to-list-microorganisms-eligible-exemption-certain-tsca
Bergeson & Campbell, P.C

On March 5, 2020, the U.S. Environmental Protection Agency (EPA) announced that it issued a final rule to add two strains of microorganisms to the list of microorganisms eligible for an exemption from certain reporting requirements under the Toxic Substances Control Act (TSCA). EPA states that manufacturers of new intergeneric *Trichoderma reesei* (strain QM6a) and *Bacillus amyloliquefaciens* (subspecies *amyloliquefaciens*) may now be eligible to undergo a streamlined review process under TSCA's new chemicals review program with reduced TSCA fees. The final rule is intended to ensure the safety of human health and the environment while reducing regulatory burden for the biotechnology industry.

EPA states that after reviewing all relevant health and safety data, it determined that the two microorganisms can be added to the list of microorganisms eligible for exemption. Under TSCA, manufacturers of a new intergeneric microorganism may be eligible to submit an exemption request in lieu of a microbial commercial activity notice (MCAN) if the organism is on the list of species eligible for an exemption and meets other criteria. EPA is including these two microorganisms on the list because it determined that the microorganisms "will not present an unreasonable risk of injury to health or the environment provided that the other criteria relating to the introduced genetic material and the physical containment of the new microorganisms have been met."

According to EPA, both microorganisms have a long history of safe use to produce a variety of commercial enzymes used in industrial and food-related industries. *Trichoderma reesei* is used by the animal feed, baking, beverages, textile processing, detergent, pulp and paper, industrial chemicals, and biofuels industries. *Bacillus amyloliquefaciens* has been used to produce commercial enzymes for more than 50 years. It produces carbohydrases, proteases, nucleases, xylanases, and phosphatases that have applications in the food, brewing, distilling, and textile industries.

The final rule will be effective 30 days after publication in the *Federal Register*.

National Law Review

EPA Releases Supplemental Proposed Rule to the Proposed Rule on Strengthening Transparency in Regulatory Science

https://www.natlawreview.com/article/epa-releases-supplemental-proposed-rule-to-proposed-rule-strengthening-transparency

Bergeson & Campbell, P.C.

On March 3, 2020, the U.S. Environmental Protection Agency (EPA) announced the availability of a supplemental notice of proposed rulemaking (SNPRM) to the Strengthening Transparency in Regulatory Science proposed rule. EPA notes that the SNPRM "is not a new rulemaking; rather, it provides clarifications on certain terms and aspects of the 2018 proposed rule." The SNPRM:

- Proposes that the scope of the rulemaking applies to influential scientific information, as well as significant regulatory decisions;
- Defines and clarifies that the proposed rule applies to data and models underlying both pivotal science and pivotal regulatory science;
- Proposes a modified approach to the availability provisions for data and models that would underlie influential scientific information and significant regulatory decisions, as well as an alternate approach; and
- Clarifies the ability of the Administrator to grant exemptions.

EPA posted a pre-publication version of the SNPRM. Publication of the SNPRM in the *Federal Register* will begin a 30-day comment period. EPA states that it "is taking comment on whether to use its housekeeping authority independently or in conjunction with appropriate environmental statutory provisions as authority for taking this action." EPA states that it anticipates promulgating a final rule **later in 2020**.

Background

On April 30, 2018, EPA issued the "Strengthening Transparency in Regulatory Science" proposed rule (Science Rule) that EPA states is intended to "strengthen the transparency of EPA regulatory science." 83 Fed. Reg. 18768. EPA states in the preamble that "[t]he proposed regulation provides that when EPA develops regulations, including regulations for which the public is likely to bear the cost of compliance, with regard to those scientific studies that are pivotal to the action being taken, EPA should ensure that the data underlying those are publicly available in a manner sufficient for independent validation." EPA further states that "EPA is proposing to establish a clear policy for the transparency of the scientific information used for significant regulations: specifically, the dose response data and models that underlie what we are calling 'pivotal regulatory science.' 'Pivotal regulatory science' is the studies, models, and analyses that drive the magnitude of the benefit-cost calculation, the level of a standard, or point-of-departure from which a reference value is calculated."

EPA intends the rule to provide this transparency "in a manner consistent with statutory requirements for protection of privacy and confidentiality of research participants, protection of proprietary data and confidential business information, and other compelling interests." EPA "will use peer-reviewed information, standardized test methods, consistent data evaluation procedures, and good laboratory practices to ensure transparent, understandable, and reproducible scientific assessments." EPA states that its "regulatory science" should be "consistent with the Office Management and Budget's *Final Information Quality Bulletin for Peer Review*," and that "[r]obust peer review plays a critical role in independently validating key findings and ensuring that the quality of published

information meets the standards of the scientific and technical community." In addition, EPA states, the proposed rule "is designed to increase transparency of the assumptions underlying dose response models," noting that "[t]he use of default models, without consideration of alternatives or model uncertainty, can obscure the scientific justification for EPA actions." More information on the proposed rule is available in our April 30, 2018, memorandum, "EPA Releases Strengthening Transparency in Regulatory Science Proposed Rule."

SNPRM

EPA states that it is issuing the SNPRM to clarify, modify, and supplement certain provisions included in the 2018 proposed rulemaking in response to some of the public comments, as well as to ensure consistency with the April 2019 Office of Management and Budget (OMB) Memorandum to the Heads of Executive Departments and Agencies entitled Improving Implementation of the Information Quality Act (OMB M-19-15). According to EPA, the memorandum is directly relevant to several provisions of the 2018 proposed rule "because it updates implementation of OMB's 2002 Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies to, among other things, reflect recent innovations and policies surrounding information access."

First, EPA states, it is modifying the regulatory text proposed in the 2018 proposed rule at 40 C.F.R. Sections 30.3, 30.5, 30.6, and 30.9 so that these provisions would apply to data and models, not only dose-response data and dose-response models. In addition, the SNPRM clarifies that the use of the terms "model assumptions" and "models" in the proposed regulatory text at 40 C.F.R. Section 30.6 apply to the assumptions that drive the model's analytic results. According to the SNPRM, EPA has modified the regulatory text at 40 C.F.R. Section 30.6 to reflect this clarification. EPA notes that this approach is consistent with OMB M-19-15, which highlights the need to characterize the sensitivity of an agency's conclusions to analytic assumptions.

Second, the SNPRM proposes to expand the scope of the rulemaking to apply to influential scientific information, as well as significant regulatory actions. EPA proposes to add definitions for "influential scientific information" and "pivotal science" at 40 C.F.R. Section 30.2 that will pertain to the science underlying influential scientific information, which are not regulatory, and to make conforming changes to proposed 40 C.F.R. Sections 30.3, 30.5, 30.6, and 30.7. EPA states that it is retaining the definition of "pivotal regulatory science" from the 2018 proposed rule regulatory text.

Third, the SNPRM modifies, deletes, and proposes new regulatory text, in addition to proposing definitions for "influential scientific information" and "pivotal science" at proposed 40 C.F.R. Section 30.2. The SNPRM deletes the first paragraph of the 2018 proposed regulatory text at 40 C.F.R. Section 30.2 and the definition of "research data" at 40 C.F.R. Section 30.2. The SNPRM proposes definitions for the terms "capable of being substantially reproduced," "data," "independent validation," "model," "publicly available," and "reanalyze." According to EPA, these revisions are intended to provide clarity on key terminology used in the regulatory text in the 2018 proposed rule, as well as in the SNPRM.

Fourth, the SNPRM deletes the 2018 proposed regulatory text at 40 C.F.R. Section 30.10. EPA states that this change is being made to be consistent with the deletion of "research data" in 40 C.F.R. Section 30.2 because 40 C.F.R. Section 30.10 would have required EPA to implement the rulemaking to be consistent with the definition of "research data." With the deletion of "research data" from proposed 40 C.F.R. Section 30.2, proposed 40 C.F.R. Section 30.10 is no longer needed.

Fifth, the SNPRM is proposing a modified version of the regulatory text at 40 C.F.R. Section 30.5 from that proposed in the 2018 proposed rule. According to EPA, under this new approach to proposed 40 C.F.R. Section 30.5, when promulgating significant regulatory decisions or issuing final influential scientific information, it "will only use pivotal regulatory science and/or pivotal science if the data and models are available in a manner sufficient for independent validation." EPA states that this includes studies with data and models that are publicly available, as well as studies with restricted data and models (*i.e.*, those that include confidential business information (CBI), proprietary data, or Personally Identifiable Information (PII) that cannot be sufficiently de-identified to protect the data subjects) if there is tiered access to these data and models in a manner sufficient for independent validation. Tiered access includes the appropriate techniques used to reduce the risk of re-identification and, therefore, mitigate certain disclosure privacy risks associated with providing such access.

EPA states that as an alternative, it is proposing that under proposed 40 C.F.R. Section 30.5, when promulgating significant regulatory decisions or issuing final influential scientific information, "other things being equal, the Agency will give greater consideration to studies where the underlying data and models are available in a manner sufficient for independent validation either because they are publicly available or because they are available through tiered access when the data includes CBI, proprietary data, or PII that cannot be sufficiently de-identified to protect the data subjects." EPA will identify those studies that are given greater consideration and will provide a short description of why greater consideration was given. EPA notes that as discussed later in the preamble, such approaches to increasing access to data and models can often allow stakeholders to reanalyze the data and models and explore the sensitivity of the conclusions to alternative assumptions while accessing only the data and aspects of the models that they need. The proposed SNPRM would apply to reviews of data, models, and studies at the time a rule is developed or influential scientific information is prepared in final, regardless of when the data and models were generated.

Sixth, the SNPRM would modify 40 C.F.R. Section 30.9 to describe the factors the Administrator would consider in determining whether to grant an exemption to the proposed public availability requirements for using data and models in significant regulatory decisions and influential scientific information.

Seventh, EPA proposes the option of using its housekeeping authority independently as authority for taking this action or in conjunction with the environmental statutory provisions cited as authority in the 2018 proposed rule (as clarified in the SNPRM). EPA states that it continues to consider whether it is appropriate to rely on its authority in the above-referenced environmental statutory provisions (potentially in conjunction with its housekeeping authority). According to the SNPRM, EPA will consider comments on this issue submitted in response to the 2018 proposed rule and in response to the SNPRM. Section 301 authority as transferred to EPA in Reorganization Plan No. 3 of 1970 provides appropriate authority for EPA to promulgate regulations that govern internal agency procedures. This action establishes internal agency procedures governing how EPA employees will handle studies when the data and models underlying science that is pivotal to EPA's significant regulatory decisions and/or influential scientific information are or are not publicly available.

EPA notes that the 2018 proposed rule solicited comment on all aspects of the proposed rulemaking. The SNPRM solicits comment only on the changes and additions to the proposed regulatory text discussed above. EPA states that comments submitted in response to the SNPRM that address aspects of the 2018 proposed rule that are not addressed, altered, or replaced by the SNPRM "will be deemed outside the scope of this supplemental action."

Commentary

EPA's original proposal was the subject of significant controversy, including many public comments of concern and an EPA Science Advisory Board (SAB) report raising issues. The SNPRM is intended to address these issues, but the proposed expansions of, and changes to, the original proposal are likely to create new issues and concerns.

The expansion of the scope of the rule, to cover all EPA "influential science," while welcome to some who believe that the science underpinning significant EPA decisions has not been available for appropriate scrutiny, has already drawn significant criticism from others. Many critics believe that EPA lacked a legal basis for promulgating the original proposal, that the proposal leaves too much to EPA's discretion as to what data are subject to it, and that it will hamper, not help sound EPA decision-making. Likewise, concerns have been expressed about EPA's potential inability to consider certain studies under the rule, with epidemiological data often referenced as an example. Additionally, some have expressed concern that the 30-day comment period is too brief for a rule that will have significant consequences.

It will be important to monitor the comment process and resolution of the many issues raised by the rule.

Politico Pro

Politico Pro: Court allows EPA more time to appeal RFS small refiner case

https://subscriber.politicopro.com/article/2020/03/court-allows-epa-more-time-to-appeal-rfs-small-refiner-case-3977496

By Eric Wolff

The 10th Circuit U.S. Court of Appeals today granted EPA two more weeks to appeal its January decision voiding a trio of small refinery exemptions from the Renewable Fuel Standard.

The deadline for filing an appeal would have been today, but the government requested an extension late Friday night. Neither biofuel producers nor refiners opposed the extension.

The Trump administration's decision to consider an appeal comes after heavy pressure from oil refiners and their allies among congressional Republicans, and it marks a shift from earlier indications that EPA would issue fewer exemptions this year. Meanwhile, corn state lawmakers continue to push the White House to not fight the ruling; Reuters reported that Sen. Joni Ernst spoke to President Donald Trump about the issue on Friday.

The oil industry is divided on the issue, as refiners sought the appeal but producers represented by the American Petroleum Institute opposed it.

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